



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Shawn C. Phillips

Texas City, TX 77590

NOV 25 2014

RE: MUR 6662

Dear Mr. Phillips:

On November 18, 2014, the Federal Election Commission reviewed the allegations in the complaint you filed on October 9, 2012, and found that on the basis of the information provided in the complaint, and information provided by the respondents, there is no reason to believe Heidi for Texas Campaign, Inc. and Heidi Thiess violated 52 U.S.C. § 30125(f)(1) (formerly 2 U.S.C. § 441i(f)(1)) and 11 C.F.R. § 300.71, 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and 11 C.F.R. § 110.11(a), and 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)). Accordingly, the Commission closed the file in this matter on November 18, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

Sincerely,
General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Heidi for Texas Campaign, Inc.
Heidi Thiess

MUR 6662

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Heidi for Texas Campaign, Inc., and Heidi Thiess ("Respondents"). It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, the Complainant alleges that the Committee funded communications in the form of emails in behalf of several federal candidates, and alleges that the communications did not include a proper disclaimer, in violation of 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d). Compl. at 2. The Complaint also alleges that the Committee failed to disclose related contributions and expenditures to the Commission, in violation of 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)). *Id.* The Committee was the state committee of Heidi Thiess, 2012 candidate for representative of Texas' 24th state district.¹

Attached to the Complaint are copies of what are alleged to be "mass marketing emails that were sent by an email service paid for by the Heidi Thiess campaign." *Id.* at 1, Ex. A, B.

¹ The Texas Ethics Commission discloses two registrations affiliated with Heidi Thiess: as a candidate, disclosing "Political Expenditures from Personal Funds," <http://www.ethics.state.tx.us/php/filer.php?acct=00067820>; and as a political committee, Heidi for Texas Campaign, Inc., <http://www.ethics.state.tx.us/php/filer.php?acct=00067916>. Geraldine Bentley is listed as treasurer in reports filed with the Texas Ethics Commission. The Texas Ethics Commission indicates that Thiess' political committee has been "dissolved."

1 The Complainant avers that the emails contain “references to and electronically piggybacked
2 upon” Thiess’ website, www.heidifortexas.com, which Complainant alleges was paid for by the
3 Thiess campaign. *Id.* at 1. Complainant alleges that these emails are in fact “political
4 communications” advocating in behalf of five federal candidates, and that they were distributed
5 to more than 500 email addresses in substantially similar form, “and therefore were regulated
6 communications.” *Id.*

7 The alleged email communications in Exhibit A of the Complaint reference two events: a
8 voter registration drive sponsored by Thiess on April 7, 2012, and a “movie night” on April 8,
9 2012. *Id.*, Ex. A. The communications include a list of several federal, state, and local
10 candidates expected to attend the April 7, 2012 voter drive. *Id.* The documents contain the
11 language “Copyright©2012 Heidi for Texas, All rights reserved” along with the logo,
12 “MailChimp,” a web-based email management service, *see* <http://mailchimp.com/about>. *Id.*
13 Exhibit B of the Complaint contains several documents dated July 17, July 22, and July 30, 2012,
14 respectively, each containing a short article by Thiess, as well as a number of photos of various
15 federal, state, and local candidates. *Id.*, Ex. B. Accompanying the photos are statements from
16 Thiess, such as: “your vote counts,” “come out and vote,” and “get out your vote,” as well as
17 listing “the candidates I am recommending for your vote.” *Id.* Additional statements include:
18 “None of these candidates are connected to each other . . . and my recommendation of them is
19 not to be misconstrued as a slate. They are my own opinions” and “NO ONE has paid for
20 my endorsement, nor offered influence in return for my support.” *Id.*, emphasis in original. At
21 the end of each document is the language, “All Rights Reserved. heidifortexas.com | political ad
22 paid for by Heidi for Texas Campaign,” with the logo “Email Marketing by iContact.” *Id.*

23 In response, Thiess states that the text in the email communications at issue reflected her

1 “own opinions” and that the communications were “not directed or paid for by any candidate.”
2 Resp. at 1. Thiess contends that no express advocacy language was used in these emails, but
3 instead consisted of a “listing” of candidates she was personally voting for and who were
4 expected to appear at various events. *Id.* Thiess also states that she is not in violation of the
5 Act’s disclaimer requirements because she is not registered with the Commission as a federal
6 candidate. *Id.* Lastly, Thiess maintains that she was not required to file an independent
7 expenditure report with the Commission because she did not reach the required \$1,000 filing
8 threshold. *Id.* at 2. Thiess contends that in July 2012, her state committee spent a total of \$47 in
9 email-related expenditures that mentioned the names of 21 individual candidates, amounting to
10 “a total of \$2.23 each,” which she maintains “does not come close to any independent spending
11 limits.”² *Id.*

12 **B. Legal Analysis**

13 The Complaint alleges that Respondents funded communications in the form of emails, in
14 behalf of several federal candidates, that did not include a proper disclaimer. The Act and
15 Commission regulations generally require certain public communications to include a disclaimer.
16 See 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11(a). The Act and
17 Commission regulations further provide that a candidate for state or local office must use funds
18 that “are subject to the limitations, prohibitions, and reporting requirements” of the Act to
19 finance a public communication that “refers to a clearly identified candidate for Federal office

² Thiess’ state committee reports do not disclose any payments for email-related services in July 2012. The Committee’s filings show only two disbursements for “email” services in 2012: \$14.03 to “Google Apps” on April 3, 2012, and \$50.00 to “MailChimp.com” on April 18, 2012. See Texas Ethics Commission Correction Affidavit for Political Committees, 30 Days Before Election Report, dated October 16, 2012. Thiess’ candidate filings, however, disclosed a \$47.00 disbursement on June 12, 2012 to “iContact” for “newsletter emailing account.” See Texas Ethics Commission Correction Affidavit for Candidate/Officeholder, July Semiannual Report, dated October 16, 2012.

1 (regardless of whether a candidate for State or local office is also mentioned or identified) and
2 that promotes or supports a candidate for that office, or attacks or opposes a candidate for that
3 office (regardless of whether the communication expressly advocates a vote for or against the
4 candidate).” 52 U.S.C. §§ 30125(f)(1), 30101(20)(A)(iii) (formerly 2 U.S.C. §§ 441i(f)(1)),
5 431(20)(A)(iii)); 11 C.F.R. § 300.71; *see also* 52 U.S.C. § 30125(f)(2) (formerly 2 U.S.C.
6 § 441i(f)(2)); 11 C.F.R. § 300.72 (excepting certain communications from this restriction).

7 A “public communication” is a “communication by means of any broadcast, cable, or
8 satellite communication, newspaper, magazine, or any outdoor advertising facility, mass mailing
9 or telephone bank to the general public, or any other form of general public political
10 advertising.” 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26. The
11 Commission has stated that the definition of public communication “does not encompass email
12 communications.” *See Internet Communications*, 71 Fed. Reg. 18596, 18597-601 (April 12,
13 2006). Commission regulations provide, for example, that a “mass mailing” does not include
14 “electronic mail.” 11 C.F.R. § 100.27. And, the Commission has stated that email is not a form
15 of “general public political advertising” because “there is virtually no cost associated with
16 sending email communications.” *Internet Communications*, 71 Fed. Reg. at 18597.

17 Accordingly, the emails at issue here are not “public communications,” did not require
18 disclaimers,³ and did not need to be financed with funds subject to the limitations, prohibitions,
19 and reporting requirements of the Act. Therefore, the Commission finds no reason to believe
20 that Respondents violated 52 U.S.C. § 30125(f)(1) (formerly 2 U.S.C. § 441i(f)(1)) and
21 11 C.F.R. § 300.71, or 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and 11 C.F.R. § 110.11(a).

³ Commission regulations do require disclaimers to be placed on “electronic mail of more than 500 substantially similar communications when sent by a political committee.” 11 C.F.R. § 110.11(a)(1) (emphasis added). There is no available information to suggest that Heidi for Texas is a federal political committee.

1 The Complaint further alleges that Respondents should have filed an independent
2 expenditure report with the Commission, but failed to do so, in violation of 52 U.S.C. § 30104(c)
3 (formerly 2 U.S.C. § 434(c)). The term “independent expenditure” means an expenditure by a
4 person for a communication expressly advocating the election or defeat of a clearly identified
5 candidate that is not made in cooperation, consultation, or concert with, or at the request or
6 suggestion of, a candidate, a candidate’s authorized committee, or their agents, or a political
7 party committee or its agents. 11 C.F.R. § 100.16.⁴ Every person that is not a political
8 committee, and that makes independent expenditures aggregating in excess of \$250 with respect
9 to a given election in a calendar year, is required to file a verified statement or report on FEC
10 Form 5. 11 C.F.R. § 109.10(b); *see also* 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)).

11 Content of the emails notwithstanding, the available information indicates any costs
12 associated with the emails at issue were not in excess of the applicable reporting threshold. In
13 the Response, Thiess provides an invoice that specifically rebuts the Complainant’s allegation
14 that the Committee spent over \$250 on the emails. This assertion is further reflected in the
15 Committee’s reports filed with the Texas Ethics Commission. Accordingly, the Commission
16 finds no reason to believe that the Respondents violated 52 U.S.C. § 30104(c) (formerly 2 U.S.C.
17 § 434(c)).

⁴ The definition of “person” includes “an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.” 52 U.S.C. § 30101(11) (formerly 2 U.S.C. § 431(11)).